IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5909 of 2006 (O&M)
Date of decision : 9.11.2006

Balwan

.....Petitioner.

Versus

Anil Kumar & Anr.

.....Respondents.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.Shalender Mohan,Advocate
for the petitioner.

****

VINOD K. SHARMA,J.(ORAL)

By way of present revision petition order dated 1.8.2006 passed by the learned Addl. District Judge, Hisar is under Challenge.

The learned Addl. District Judge has declined the application moved by the petitioner for permission to file the appeal on behalf of the appellant through next friend by claiming himself to be of unsound mind.

The respondent plaintiff has filed a suit for specific performance of agreement dated 23.3.1998. The defendant No.1 after executing the agreement of sale failed to execute the sale deed. The defendant No.1 in order to defeat the right of the plaintiff illegally executed a lease deed in respect of the land agreed to be sold to the petitioner in favour of defendant No.2, who was taking steps to alienate the land.

The suit was contested by the defendants by filing a joint written statement wherein a stand was taken that the defendants were selling vegetables to the plaintiff-respondent and in that contest their signatures

were taken and forged agreement was executed which is result of fraud and misrepresentation.

The petitioner was represented through a counsel and during the pendency of the proceedings a counsel was also changed. Before the appellate Court an application was moved under Order 32 C.P.C. seeking appointment of guardian for the petitioner appellant. It was claimed in the application that Balwan appellant No.2 was of unsound mind since birth and, therefore, could not understand anything and, therefore, his interest is required to be protected through next friend. In support of this contention a medical certificate was sought to be produced wherein his income was shown to be Rs. 900/- p.m. The said medical certificate shown that the petitioner was taken to the Psychiatry Department for treatment but report shows that he was not cooperative and thereafter he failed to appear before the doctor.

The learned Addl. District Judge on appreciation of evidence and material placed on record came to the conclusion that application was liable to be dismissed as Sh. Balwan was not suffering from any alleged disability. The Court also took note of the fact that Sh. Balwan had appeared in the Court and did not seem to be suffering from any mental disorder.

On the basis of the above finding, the application was dismissed.

The learned counsel for the petitioner by placing reliance on the medical prescription slip Ex.P4 submitted that Sh. Balwan was suffering from schizophrenia. However, the medical evidence brought on record does not show the level of schizophrenia and, therefore, it could not be said that he was not capable to watch his interest. In the present case, it would be

seen that defendant No.1 had by way of lease deed transferred the land in favour of defendant No.2, and he is alleged to be of unsound mind only to defeat the right of the plaintiff-respondent. In view of this it could not be said that defendant No.2 was of unsound mind. The learned Courts below keeping in view the fact that Sh. Balwan had appeared in the Court came to the positive conclusion that he was not of unsound mind. There is no illegality or error in exercise the jurisdiction which may call for interference by this Court.

Dismissed.

9.11.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**